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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,533	04/14/2004	Karla Klumpp Berger	1059-003	6532

34060 7590 10/04/2004

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EXAMINER
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NELSON JR, MILTON

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/824,533

Applicant(s)

BERGER, KARLA KLUMPP

Examiner

Milton Nelson, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information referred to in the information disclosure statement filed April 14, 2004 has been considered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In claim 15, Applicant sets forth the method as including the step of "assembling the headrest assembly". This steps appear after the steps of attaching the headrest assembly to the uprights, and adjusting the headrest assembly. It is unclear how the headrest assembly is assembled after it is attached and adjusted. It would appear that assembly would necessarily happen before attachment and adjustment. The claimed sequence of steps also appears to contradict Figure 7.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) he has abandoned the invention.

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

(f) he did not himself invent the subject matter sought to be patented.

(g)(1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's

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invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Sims (5791614). Note the snap means (9, 16) and rigid horizontal member (3)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane (3730589) in view of Sims (5791614).

The primary reference shows all claimed features of the instant invention with the exception of the capacity of snap engagement of the headrest assembly to the wheelchair uprights. Note the rigid horizontal member (16, 18, 28, 30, 32, 34, 36), head support (52), opposing head supports (52, 54), washable head pad (52), removability of the head pad (both 48 and 58 allow this), height adjuster (42), and depth adjuster (66, 70).

The secondary reference teaches providing a rigid horizontal member (3) with means (9, 15) for snap-engaging the member to a pair of uprights.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by replacing the attaching portions (16, 18, 28, 30) of the horizontal member with the snap means (9, 15). Such enhances quick release and attachment of the rigid member to the uprights.

Claims 1, 2, 5-7, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benoit (6099021) in view of Sims (5791614).

The primary reference shows all claimed features of the instant invention with the exception of the capacity for snap engagement of the headrest assembly to the wheelchair uprights. Note the rigid horizontal member (4, 5, 8), washable head pad (19), removability of the head pad (see column 4, lines 35-39), height adjuster (see Figure 8), and depth adjuster (18).

The secondary reference teaches providing a rigid horizontal member (3) with means (9, 15) for snap-engaging the member to a pair of uprights.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by replacing the attaching portions (5, 8) of the horizontal member with the snap means (9, 15). Such enhances quick release and attachment of the rigid member to the uprights.

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Claims 1, 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higley et al (2004/0104614) in view of Sims (5791614).

The primary reference shows all claimed features of the instant invention with the exception of the capacity of snap engagement of the headrest assembly to the wheelchair uprights. Note the rigid horizontal member (64), and depth adjuster (68).

The secondary reference teaches providing a rigid horizontal member (3) with means (9, 15) for snap-engaging the member to a pair of uprights.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by replacing the attaching portions (70) of the horizontal member with the snap means (9, 15). Such enhances quick release and attachment of the rigid member to the uprights.

Claims 5, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higley et al (2004/0104614) in view of Sims (5791614), as applied to claim 1 above, and further in view of MacDonald (4375901).

The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the head pad (claim 5); the head pad being located adjacent the width adjuster (claim 9); the head pad surrounding the width adjuster (claim 10).

MacDonald teaches providing a rigid horizontal member (23) with a pad (31) attached adjacent to or surrounding the rigid horizontal member.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of the secondary reference by adding a pad member (claim 5) to the rigid horizontal member; wherein the pad member is located adjacent to the rigid horizontal member (claim 9); wherein the pad member surrounds the rigid horizontal member (claim 10). Providing the pad member conventionally enhances user comfort.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane (3730589) in view of Sims (5791614), as applied to claim 1 above, and further in view of Browne (522192).

The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the headrest width adjuster (claim 8); wherein the headrest width adjuster is located adjacent a head pad (claim 9).

Browne teaches providing a headrest assembly with a headrest width adjuster (J, K) that is located adjacent to a head pad (L).

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of Browne by replacing the screws (58) with the slot in member J, and adding the member K. Such provides a means for adjusting the width of the headrest, thereby providing the user with the capacity to selectively configure the assembly to their specific needs. Providing this configuration necessarily places the adjuster adjacent to the head pad.



Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lane (3730589) in view of Sims (5791614).

The primary reference shows all claimed features of the instant invention with the exception of the capacity of snap engagement of the headrest assembly to the wheelchair uprights. Note the wheelchair (12), uprights (14), and rigid horizontal member (16, 18, 28, 30, 32, 34, 36).

The secondary reference teaches providing a rigid horizontal member (3) with means (9, 15) for snap-engaging the member to a pair of uprights.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by replacing the attaching portions (16, 18, 28, 30) of the horizontal member with the snap means (9, 15). Such enhances quick release and attachment of the rigid member to the uprights.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benoit (6099021) in view of Sims (5791614).

The primary reference shows all claimed features of the instant invention with the exception of the capacity for snap engagement of the headrest assembly to the wheelchair uprights. Note the wheelchair (2), uprights (20), and rigid horizontal member (4, 5, 8).

The secondary reference teaches providing a rigid horizontal member (3) with means (9, 15) for snap-engaging the member to a pair of uprights.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by replacing the attaching portions (5, 8) of the horizontal member with the snap means (9, 15). Such enhances quick release and attachment of the rigid member to the uprights.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higley et al (2004/0104614) in view of Sims (5791614).

The primary reference shows all claimed features of the instant invention with the exception of the capacity of snap engagement of the headrest assembly to the wheelchair uprights. Note the rigid horizontal member (64) and uprights (60).

The secondary reference teaches providing a rigid horizontal member (3) with means (9, 15) for snap-engaging the member to a pair of uprights.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by replacing the attaching portions (70) of the horizontal member with the snap means (9, 15). Such enhances quick release and attachment of the rigid member to the uprights.

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Claims 14, 15 (as best understood with the above cited indefiniteness), 16, 17 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane (3730589) in view of Sims (5791614).

The primary reference shows all claimed features of the instant invention with the exception of the capacity of snap engagement of the headrest assembly to the wheelchair uprights and the specifically claimed method steps. Note the rigid horizontal member (16, 18, 28, 30, 32, 34, 36), head support (52), opposing head supports (52, 54), washable head pad (52), removability of the head pad (both 48 and 58 allow this), height adjuster (42), and depth adjuster (66, 70).

The secondary reference teaches providing a rigid horizontal member (3) with means (9, 15) for snap-engaging the member to a pair of uprights.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by replacing the attaching portions (16, 18, 28, 30) of the horizontal member with the snap means (9, 15). Such enhances quick release and attachment of the rigid member to the uprights. It would have further been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the instant invention to use or assemble the modified structure by the above cited method steps. Such takes advantage of the capacity to quickly assemble and use the providing structure.

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Claims 14, 15 (as best understood with the above cited indefiniteness), 16, 17 and 19-21, are rejected under 35 U.S.C. 103(a) as being unpatentable over Benoit (6099021) in view of Sims (5791614).

The primary reference shows all claimed features of the instant invention with the exception of the capacity for snap engagement of the headrest assembly to the wheelchair uprights and the specifically claimed method steps. Note the rigid horizontal member (4, 5, 8), washable head pad (19), removability of the head pad (see column 4, lines 35-39), height adjuster (see Figure 8), and depth adjuster (18).

The secondary reference teaches providing a rigid horizontal member (3) with means (9, 15) for snap-engaging the member to a pair of uprights.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by replacing the attaching portions (5, 8) of the horizontal member with the snap means (9, 15). Such enhances quick release and attachment of the rigid member to the uprights. It would have further been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the instant invention to use or assemble the modified structure by the above cited method steps. Such takes advantage of the capacity to quickly assemble and use the providing structure.

Claims 14, 15 (as best understood with the above cited indefiniteness), 17, 18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higley et al (2004/0104614) in view of Sims (5791614).

The primary reference shows all claimed features of the instant invention with the exception of the capacity of snap engagement of the headrest assembly to the wheelchair uprights and the specifically claimed method steps. Note the rigid horizontal member (64), and depth adjuster (68).

The secondary reference teaches providing a rigid horizontal member (3) with means (9, 15) for snap-engaging the member to a pair of uprights.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by replacing the attaching portions (70) of the horizontal member with the snap means (9, 15). Such enhances quick release and attachment of the rigid member to the uprights. It would have further been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the instant invention to use or assemble the modified structure by the above cited method steps. Such takes advantage of the capacity to quickly assemble and use the providing structure.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lane (3730589) in view of Sims (5791614), as applied to claim 14 above, and further in view of Browne (522192).

The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the additional step of adjusting a width of at least a portion of the headrest assembly.

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Browne teaches providing a headrest assembly with a headrest width adjuster (J, K) that is located adjacent to a head pad (L).

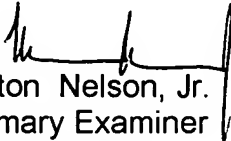
It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of Browne by replacing the screws (58) with the slot in member J, and adding the member K. Such provides a means for adjusting the width of the headrest, thereby providing the user with the capacity to selectively configure the assembly to their specific needs. It would have further been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the instant invention to use or assemble the modified structure by the above cited method steps. Such takes advantage of the capacity to quickly adjust and use the providing structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Friday 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Milton Nelson, Jr.  
Primary Examiner  
Art Unit 3636

Mn  
September 28, 2004